

PROPOSED MODIFICATIONS TO DRAFT RULES – CONFLICTS OF INTEREST

468-600-030. Conflict of Interest, Proposer Conduct & Appearance of Fairness

468-600-031. Conflict of Interest.

(1) ~~((No private sector partner, whether a Major Partner or a Major Subcontractor, may participate in an eligible project developed under the TIP program if the private partner, to the best of its knowledge, is aware of a conflict of interest. For purposes of these rules, a conflict of interest means that because of other activities or relationships with other persons or entities, including activities or relationships of its principal officers, its owners or its subcontractors, a firm is unable or potentially unable to render impartial assistance or advice to the state; or is unable or potentially unable to carry out its contractual obligations in an objective manner; or the private partner's ability to work in a "best for project" manner is any way affected, diminished or impeded.~~

~~((2))~~ By submitting a proposal, the Proposer certifies that ~~((, to the best of its knowledge,))~~ it is unaware of any information that might be pertinent in determining whether ~~((a conflict of interest))~~ an Organizational Conflict of Interest exists. If the Proposer is aware of information that might be pertinent to this issue, the Proposer must provide, as an exception to the certification, a disclosure statement fully describing this information in a form suitable to the Department approved by the Commission as part of its proposal. For purposes of this section, "Organizational Conflict of Interest" means that because of other activities or relationships with other persons, a proposer, a principal officer or a proposer, or a prime contractor who is proposed to perform construction or design work on an eligible project, is unable or potentially unable to render impartial assistance or advice to the Department State; or the person's objectivity in performing the proposed contract work is or might be otherwise impaired; or a person has an unfair competitive advantage.

(2) After review and approval by the Commission, the The Department shall publish and make available Conflict of Interest guidelines and policies that encompass the standards of conduct required by federal and state law, and as further required in these

administrative rules. The Conflict of Interest guidelines and policies may be modified as necessary to meet the particular objectives of individual projects, whether those projects emanate from solicited or unsolicited proposals.

468-600-035. Proposer Conduct. (1) Proposers are prohibited from influencing or attempting to influence the evaluation of, or the decision to select a specific project proposal that has been submitted, or may be submitted under these rules, except as specifically allowed under these rules or as specifically allowed by the state in any RFP document. This includes, but is not limited to, attempts to influence officers or employees of the state or elected or appointed officials of the local, state or federal level of government.

(2) For those activities not prohibited by subsection (1) but which attempt to influence decision-making in any legislative branch, Proposers must fully disclose all lobbying activities undertaken by any of its contractors, officers, employees or agents that are subject to public disclosure under RCW 42.17 or federal law. For lobbying activities subject to RCW 42.17, copies of all required disclosure forms for the previous two years' reporting cycles must be submitted.

468-600-038. Conflict of Interest by State Officials; Appearance of Fairness.

(1) Any person elected, appointed or employed by the state, who has a conflict of interest or potential conflict of interest, must disclose such actual or potential conflict of interest and abstain from consideration, discussion, debate, and decision-making concerning any project proposal submitted under these rules.

(2) During the pendency of any solicitation, negotiation or selection of a proposal, no member of the Commission may engage in ex parte communications with proponents or opponents with respect to the proposal, unless that person:

- (a) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and
- (b) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each meeting where action is considered or taken on the subject to which the

communication related. This prohibition does not preclude a member of the Commission from seeking in a public meeting specific information or data from such parties relative to the decision if both the request and the results are a part of the public record.